IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05/11/2004

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

W.P.No7370 of 2004

C.Rajendran .. Petitioner

-Vs-

1. The Joint Registrar of Co-op.
Societies, Madurai.

2. The Deputy Registrar of Co.op.
Societies, Usilampatti Circle,
Tirumangalam, Madurai Dist.

3. Thirumangalam Co-op Primary
Agriculture & Rural Development
Bank Ltd., No.Mu.53, rep. by its
Special Officer,
Tirumangalam,
Madurai District. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India
praying for the relief as stated therein.

For petitioner : Mr.C.Prakasam

For respondents : Mr.T.Ravikumar for R.3
No appearance for R.1 & R.2

:O R D E R
Writ petition has been filed praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the third respondent in his proceedings order No.01 dated 6.3 .2004 and quash the same and consequently direct the third respondent to sanction the terminal benefits of the petitioner on the basis of last drawn salary as per concluded settlement dated 16.11.1998.

2. The brief facts of the case in hand are as follows:-
The petitioner was the Secretary of the third respondent Bank, having joined the said Bank on 24.9.1970, he retired as such on 30.11.200 3 on superannuation. His case is that while he was in service, the elected Board

of Management, entered into a settlement with the workmen under Section 18(1) of the I.D. Act including himself for the fixation of cadre strength, payment of salary and allowances etc. besides allowing other service conditions on 16.11.1998 w.e.f. 1.1.1998 and according to clauses 28 and 30 of the said settlement, the employees of the third respondent are allowed to enjoy the benefits as are being enjoyed by the government servants. On his retirement, he was paid a sum of Rs.19,496/= as his last drawn salary and he made an application for disbursement of the terminal benefits on the basis of the last drawn salary which was rejected by the third respondent and calculated the terminal benefits on the basis of the salary received by him prior to settlement i.e. Rs.14,612/= and hence the writ petition.

3. In the counter affidavit filed by the third respondent/bank sworn by its Special Officer it would admit that a settlement was entered into between the petitioner and the third respondent under Section 18 (1) of the Industrial Disputes Act, 1947 on 16.11.1998, thereby revising, increasing and creating salary and other service benefits giving effect to the same from 1.1.1998; that the salary and other service benefits of the employees were revised through G.O.Ms.No.186 Co-operative dated 16.8.2000 and the Deputy Registrar of Co-operative Society advised the Management that the settlement was entered into without permission from the Department nor adhering the norms and hence the same was illegal; that the employees of the bank challenged the G.O. by way of a writ petition in W.P.No.21614 of 2000 in which an interim stay was ordered and hence the settlement continued to operate and ultimately, the batch of writ petitions and appeals filed in W.A.No.2501 of 2001 etc. batch dated 24.10.2002.

4. The counter affidavit would further allege that according to the said judgment "the settlements entered into under Section 12 (3) or 18 (1) of the Industrial Disputes Act, have got no statutory force and are unenforceable. Promotions effected o fall to ground."; that as per the directions of this High Court, the payment of salary in terms of settlements entered into between the employees and the management of the third respondent bank became ineffective and without force and hence the salary paid in terms of the illegal settlement was revised and since the employees became entitled to the payment of salary as prior to settlement; that the writ petitioner at the time of retirement was drawing a salary of Rs.19,496/- as per the settlement, but prior to the settlement his salary was Rs.14,612/-; that as per the orders of this High Court, the petitioner is entitled to the payment of the last drawn salary i.e. prior to settlement; that the judgment was rendered on 24.10.2002 and the writ petitioner attained superannuation on 30.11.2003; that as per the judgment whatever be the entitlement of the petitioner, it was settled; that if at all there is any balance, it would be paid after the compliance of Rule 149 of the Co-operative Societies Rules vide direction of this Court. On such and such other averments, this respondent would ultimately pray to dismiss the above writ petition.

5. During arguments, the learned counsel appearing on behalf of the petitioner would submit that the settlement under Section 18(1) of the Industrial Disputes Act, 1947 is valid till it is superseded by another settlement; that the petitioner was appointed in the year 1970 and he retired

on 30.11.2003 whereas the settlement was dated 16.11.19 98; that the judgment of the Division Bench of this Court is applicable only to those who were appointed after 1980 and not to the petitioner. At this juncture, the learned counsel for the petitioner would cite a judgment of the Honourable Apex Court delivered in KARNATAKA STATE ROAD TRANSPORT CORPORATION vs. KSRTC STAFF & WORKERS' FEDERATION AND ANTOEHR reported in (1999) 2 SCC 687 wherein it has been held that 'the settlement arrived at under Ss.18(1) and 2(p() of the Industrial Disputes Act for a specified period, would continue to be binding even after the expiry of that period as a contractual obligation till replaced by another settlement and unilateral withdrawal of the said facility by the Management is violative of the binding settlement and penal under Section 29.'

6. For the same purpose, the learned counsel for the petitioner would also cite a judgment of a learned single Judge of this Court delivered in SOUTH ARCOT DISTRICT CENTRAL COOPERATIVE BANK LTD. EMPLOYEES ASSOCIATION, REP.BY ITS PRESIDENT, CUDDALORE vs. THE DEPUTY COMMISSIONER OF LABOUR, D.M.S. COMPOUND, TEYNAMPET, MADRAS-6 AND ANOTHER reported in 1998(III) CTC 143.

7. The learned counsel for the petitioner would further cite the following unreported judgments of this Court:

1. W.P.Nos.23162 to 23165 of 2002, dated 3.9.2002
2. W.P.No.30222 of 2003, dated 16.2.2004 and
3. W.P.No.15683 of 2004, dated 25.6.2004.

8. On the other hand, the learned counsel appearing on behalf of the third respondent would submit that the settlement entered into between the petitioner and the Bank under Section 18(1) of the Act was unenforceable; that the petitioner is entitled for the retirement benefits only as per the judgment; that all the benefits had been granted to the petitioner; that the judgment was dated 24.10.2002 i.e., one year and a month before the retirement of the petitioner from service; that since the judgment was received belatedly in the meantime, he retired from service; that on seeing the judgment and coming to know that the settlement was an unenforceable, they stopped payment of further amounts. On such arguments, the learned counsel for the respondents would pray to dismiss the above writ petition.

9. In consideration of the materials placed on record and upon hearing the learned counsel for the petitioner and the third respondent as well, it comes to be known that the case of the petitioner is that he is entitled to the terminal benefits on the basis of the last drawn salary as per the concluded settlement dated 16.11.1998. But, the argument of the learned counsel for the third respondent is to the effect that the Settlement under Section 18(1) of the Industrial Disputes Act, 1947 was invalid and cannot be endorsed since it is against the judgment of the Division Bench of this Court dated 24.10.2002 in W.A.No.2501 of 2001, and therefore the settlement became unenforceable and the retirement benefits of the petitioner, taking into consideration of his last drawn salary prior to the settlement, would be fixed and the same has also been acted upon and if there is any balance, it will be paid after compliance of Rule 149 of the Co-operative Societies Rules by the directions of this Court.

10. Regarding the judgments cited by the learned counsel for the petitioner, the unreported judgment delivered by a learned single Judge of this Court in W.P.No.30222 of 2003, dated 16.2.2004, which was followed in

another unreported judgment delivered by a learned single Judge of this Court dated 25.6.2002 made in W.P.No.15683 of 2004, is regarding the initiation of disciplinary proceedings for any alleged misconduct of an employee wherein it has been held that 'after the retirement since the employee-employer bondage is no longer in existence between them and once the employee is permitted to retire, the bond of employee and employer cuts, and therefore, the employer would have no power to initiate any action against the retired employee or continue any proceeding.'

11. But, in the case in hand, based on a judgment of the Court, the impugned proceedings are initiated by the authorities to recover the excess amounts paid to the petitioner but not in consolidation of any departmental enquiry for any misconduct. Since the said judgments cited by the learned counsel for the petitioner are on a different footing, they cannot be applied to the facts of the case in hand.
12. So far as the other judgment delivered by this Court in W.P.Nos.23162 to 23165 of 2002, dated 3.9.2002, is concerned, though the same is regarding the settlements entered into between the Management and workmen under Sections 18(1) and 12(3) of the Industrial Disputes Act, similar to the case in hand, since the point raised in this case is that 'whether only by virtue of and falling in line with the Division Bench judgment of this Court in the batch of Writ Appeals and Writ Petitions in W.A.Nos.2501 and 2502 of 2001 and batch, dated 24.10.20 02, the impugned proceedings have been issued by the respondents' and since the said judgment cited by the learned counsel for the petitioner is earlier to the Division Bench judgment of this Court, no orders could be passed either following or falling in line with the said order passed by this Court.

13. Regarding the other judgments cited by the learned counsel for the petitioner, reported in (1999) 2 SCC 687 and 1998(III) CTC 143 it is to be held that there is no denying of the proposition held therein to the effect that 'any settlement would be in force even after it has expired, unless it is cancelled or superseded by another settlement.'

14. The reason attributed by the respondents to pass the impugned order is that a Division Bench of this Court, in the batch of Writ Appeals and Writ Petitions, dated 24.10.2002, has held that "the settlements entered into under Section 12(3) or 18(1) of the Industrial Disputes Act, have got no statutory force and are unenforceable and the promotions effected also fall to ground".

15. But, a thorough reading of the said Division Bench judgment of this Court would show that this Court in the relief column No.(vii) of the said common judgment has held "that either the provisions of Tamil Nadu Industrial Establishments (conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 9.7.1980 to 11.3.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.3.2001 onwards".

16. The stand point of the petitioner is that the said direction of this Court would apply only to the employees, who were appointed between 9.7.1980 and 11.3.2001 and since he was appointed on 24.9.1970, the said finding would not apply to his case.

17. As it has been argued on the part of the petitioner, in accordance with clause (vii) of the result column of the above judgment rendered in the above batch of cases, "either the provisions of Tamil Nadu Industrial Establishments (conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 or 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 9.7.198 0 to 11.3.2001...." and since the petitioner does not fall under these categories of the staff of the Cooperative Societies, it would only mean that whatever commitments have been made regarding those who are not mentioned in this relief clause, particularly regarding the settlements entered into under Sections 12 or 18 of the Industrial Disputes Act, 1947 and the settlements entered into under Sections 12 or 1 8 thereof would be valid and binding and therefore since the settlement alleged to have been entered into in between the management and the petitioner under which the fixation of the salary has been done since not being covered under the said judgment of the above batch of writ appeals, the settlement so entered into holds good and therefore the last drawn salary of the petitioner in accordance with the settlement under Section 18(1) of the Industrial Disputes Act is perfectly legal. Therefore, the retirement benefits of the petitioner should have been computed only in consideration of his last drawn salary in accordance with the settlement i.e. Rs.19,496/= and hence the following judgment:

In result,

(i) the above Writ Petition succeeds and the same is allowed.

(ii) The impugned order passed by the third respondent in his proceedings Order No.01, dated 6.3.2004 is quashed.

(iii) The respondents are directed to sanction the retirement and terminal benefits of the petitioner on the basis of his last drawn salary as per the concluded settlement dated 16.11.1998.

However, in the circumstances of the case, there shall be no order as to costs.

Index: Yes
Internet: Yes

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To
1. The Joint Registrar of Co-op.Societies,
Madurai.

2. The Deputy Registrar of Co.op. Societies,
Usilampatti Circle,
Tirumangalam, Madurai Dist.

3. The Special Officer,
Thirumangalam Co-op Primary
Agriculture & Rural Development
Bank Ltd., No.Mu.53,
Tirumangalam,
Madurai District.